

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELISSA L. DREHER,

Plaintiff,

v.

ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY, an
Illinois corporation, and DOES I-V,

Defendants.

NO. 2:24-CV-0139-TOR

ORDER GRANTING ALLSTATE'S
MOTION FOR PROTECTIVE
ORDER

BEFORE THE COURT is Defendant Allstate's Motion for a Protective Order (ECF No. 24). The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant's Motion for a Protective Order (ECF No. 24) is **GRANTED**.

BACKGROUND

This case arises out of a motor vehicle collision which occurred in Spokane County, Washington, on July 5, 2021. ECF No. 1-2 at 4, ¶ 3.1. Plaintiff was driving southbound on State Route 27 in Spokane County when another driver

1 collided into her. ECF No. 1-2 at 4, ¶ 3.1. Plaintiff, who was not responsible for
2 the accident, maintains she sustained multiple injuries and damages. *Id.* at 4, ¶ 3.2.

3 Both Plaintiff and the at-fault driver were insured by Defendant Allstate. *Id.*
4 at 3, ¶ 2.2; 4, ¶ 3.4. At the time of the accident, the at-fault driver was
5 underinsured. *Id.* at 4, ¶ 3.3. Plaintiff paid insurance premiums for underinsured
6 motorist (UIM) coverage from Defendant. *Id.* at 4, ¶ 3.4. Plaintiff sought her full
7 UIM policy limits—\$250,000—and tendered to Defendant a demand letter, her
8 medical records, and other documentation supportive of her claims. *Id.* at 5, ¶¶
9 3.5-3.6. When Defendant declined to provide Plaintiff her UIM policy limits,
10 Plaintiff filed a complaint in Spokane County Superior Court alleging breach of
11 contract, violations of the Washington Administrative Code (WAC) and Revised
12 Code of Washington (RCW) for claims mishandling and unreasonable denial of
13 benefits, violations of the Washington Consumer Protection Act (CPA), bad faith,
14 and violations of the Insurance Fair Conduct Act (IFCA). *Id.* at 5-10. Plaintiff
15 seeks her UIM policy limits, treble damages, and attorneys’ fees and costs. *Id.* at
16 10-11.

17 As part of discovery, Plaintiff served Defendant the first set of
18 interrogatories and requests for production. Materials requested included all
19 information related to Defendant’s claims as well as personnel records of specific
20 employees, and any other employees “who adjusted, reviewed, advised, consulted,

1 investigated, made an entry in the claims diary or claims file, or did any work
2 whatsoever regarding the claim (including PIP, Property Damage or UIM) made
3 by Plaintiff Melinda Dreher.” ECF No. 25-1 at 33-76. Defendant now moves for a
4 protective order for Defendant’s post-threat of litigation claims file and
5 Defendant’s employee personnel files. ECF No. 24.

6 DISCUSSION

7 “A party or any person from whom discovery is sought may move for a
8 protective order in the court where the action is pending.” Fed. R. Civ. P. 26(c).
9 The moving party must certify the parties conferred or attempted to confer in good
10 faith to resolve the dispute. *Id.* For good cause shown, the Court may “protect a
11 party or person from annoyance, embarrassment, oppression, or undue burden or
12 expense.” *Id.* Here, the parties conferred without a resolution. ECF No. 24 at 3.

13 A. Post-litigation claims file

14 Defendant seeks a protective order of all information in the claims file dated
15 after April 20, 2023, Plaintiff’s threat of litigation date, and February 8, 2024, after
16 Plaintiff’s IFCA Notice. ECF No. 24 at 6. In support of this request, Defendant
17 argues that post-litigation materials are privileged and not discoverable in the UIM
18 context pursuant to *Lock v. Am. Family Ins. Co.*, 12 Wash. App. 2d 905 (2020) and
19 *Richardson v. Gov’t Emps. Ins. Co.*, 200 Wash. App. 705, 719 (2017).

1 The Washington Supreme Court in *Cedell v. Farmers Insurance Company of*
2 *Washington*, 176 Wash. 2d 686 (2013) held that attorney-client privilege is
3 presumptively inapplicable in a first-party insurance bad faith action. *Id.* at 698-
4 99. However, the court identified an exception for UIM claims because “[t]he
5 UIM insurer steps into the shoes of the tortfeasor and may defend as the tortfeasor
6 would defend.” *Id.* at 697. Thus, the insurer may invoke the attorney client
7 privilege when it reasonably believes “that it is preparing for litigation against the
8 insured and therefore steps into the shoes of the tortfeasor.” *Spicher v. Am. Family*
9 *Mutual Ins. Co. S.I.*, No. C22-1116 MJP, 2023 WL 4561639, at *1 (W.D. Wash.
10 July 17, 2023). This Court and other courts have found attorney client privilege
11 kicks in once the plaintiff makes a formal filing. *Nielson v. Calif. Captial Ins. Co.*,
12 No. 2:22-CV-0177-TOR, 2023 WL 11091242, at *8 (E.D. Wash. Sept. 29, 2023)
13 (“The Court also grants the motion inasmuch as it seeks to prevent evidence or
14 argument regarding claims decisions made after the suit began”); *see also*
15 *Spicher*, 2023 WL 4561639, at *2 (“The Court finds that once Defendant received
16 the IFCA notice . . . it may invoke the attorney client privilege and work product
17 doctrine.”).

18 Here, Defendant’s received Plaintiff’s threat of litigation letter April 20,
19 2023 but did not receive the IFCA Notice until February 8, 2024. The threat of
20 litigation letter would have put Defendant on notice of possible litigation. Any of

1 the claims files prepared in anticipation of litigation thereafter is protected as
2 privileged. However, any evidence that related to Plaintiff's claims between the
3 letter and IFCA Notice that was not created in anticipation of litigation is not
4 protected. Plaintiff does not contest Defendant's request regarding post-litigation
5 materials, or the dates put forth by Defendant (ECF No. 29).

6 Therefore, the Court **grants** Defendant's motion for protective order under
7 the following conditions. Information regarding the materials in the claims file
8 dated after February 8, 2024 is privileged and undiscoverable, however, Defendant
9 may assert attorney client privilege and work product doctrine on files dated
10 between April 20, 2023 and February 8, 2024 but may not withhold otherwise
11 responsive documents without providing a privilege log detailing what records are
12 being withheld and sufficient information to allow Plaintiff to test the assertion.

13 **B. Employee personnel files**

14 Defendant also seeks a protective order regarding employee personnel files.
15 In support, Defendant argues Plaintiff's request for the files constitutes a "fishing
16 expedition" under *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004);
17 will not reasonably lead to the discovery of admissible evidence; and serve to
18 annoy, embarrass, and burden the employees which does not outweigh the
19 potential benefit the files provide. ECF No. 24 at 7.

1 Plaintiff contends that Defendant's argument and cited case law refer to
2 post-litigation employment records, and Plaintiff seeks both post and pre-litigation
3 files. ECF No. 29 at 3. Plaintiff argues the employment records of the identified
4 adjusters may indicate whether they were motivated by Defendant in their actions
5 making it relevant to Plaintiff's breach of contract, bad faith, and IFCA violation
6 claims. *Id.* at 4. Further, Plaintiff argues she cannot discover such information
7 other than from the employment files, and her counsel was willing to work out an
8 agreement to protect confidential material. *Id.*

9 As an initial matter, Defendant's request for a protective order regarding
10 post-litigation information in the claims file is a separate issue from the personnel
11 files. Defendant's cited cases Plaintiff refers to relate to the claims file, not
12 employment records. *See supra.*

13 The Court finds Defendant has shown good cause for a protective order
14 regarding personnel files. Plaintiff's argument that the employment records will
15 indicate the motivations of the adjusters' conduct related to her claims is wholly
16 speculative. Nothing in the record indicates that a personnel's entire employment
17 file including performance evaluations, salary history, trainings, duties and
18 positions within the company for the last ten years are relevant to Plaintiff's claims
19 or proportional to the needs of the case. Further, the information is specific to
20 particular employees and may burden them with annoyance and embarrassment.

1 *See In re Roman Catholic Archbishop of Portland in Or.*, 661 F.3d 417, 424 (9th
2 Cir. 2011) (“Under Rule 26, ‘[t]he court may, for good cause, issue an order to
3 protect a party or person from annoyance, embarrassment, oppression, or undue
4 burden or expense.’”). Plaintiff’s willingness to enter into a stipulated protective
5 order to protect confidential information such as social security information and
6 medical records does not sufficiently narrow the amount of personnel information
7 Plaintiff is asking for.

8 Accordingly, the court **grants** Defendant’s motion for protective order,
9 however, notes that it does not preclude Plaintiff from establishing relevance of the
10 material sought in the future.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

12 Defendant’s Motion for Protective Order (ECF No. 24) is **GRANTED**.

13 The District Court Executive is directed to enter this Order, furnish copies to
14 counsel.

15 DATED November 1, 2024.



THOMAS O. RICE
United States District Judge